

At this point the inspector issued a § 104(a) citation alleging a violation of § 103(f) of the Act. White was given ten minutes to abate the citation. White agreed Rabbitt could accompany the inspector. The citation was then terminated (Tr. 33). White then indicated Rabbitt should sign a waiver form. Inspector Boston checked with his supervisor. He was directed to proceed. White asked for an additional citation but the inspector added the waiver allegation to the prior citation. <sup>2/</sup> Rabbitt did not sign the waiver and Emery abated the citation by permitting Rabbitt to accompany the inspector (Tr. 33-42, 61). Boston believed it was clear to White that if he did not permit Rabbitt to enter the mine without signing the waiver the inspector would issue a closure order. But it was not clear to the inspector at the time whether White knew that the closure order would be a "no-area affected order" <sup>3/</sup> (Tr. 63).

This was a AAA inspection. It was not an inspection under section 103(g) of the Act. Rabbitt was not abrasive and acted in an orderly manner (Tr. 45, 51). Boston had been instructed that international representatives are miners' representatives (Tr. 55).

<sup>2/</sup> After the inspection the inspector decided he was not satisfied with the wording of the original citation, so he voided the original and issued a new citation No. 2834575 (Tr. 34-44, 49, 64-67; Gov't. Ex. 5).

<sup>3/</sup> A "no area affected order" arises from the Secretary's Interpretative bulletin published in F.R. Vol. 43, No. 80 April 25, 1978 and contained in Government Exhibit 4. It provides in part as follows:

It should be noted that section 104(b) of the Act provides for issuance of withdrawal orders if an inspector finds that a violation described in a citation has not been abated. Pursuant to the requirements of section 104(b), orders under that provision will be issued in cases where there has been a failure to abate violations of section 103(f). However, actual withdrawal of miners will not ordinarily occur in cases arising under section 103(f), because section 104(b) also requires the inspector to determine the extent of the area of the mine affected by the violation. In most cases, the area(s) of the mine affected by an operator's refusal to permit participation or to compensate the representative(s) under section 103(f) would be a matter of conjecture and could not be determined sufficient specificity. However, cases may arise where a particular condition or situation, in the opinion of the inspector, cannot be adequately evaluated in the absence of a representative of miners. In such cases, the area affected by a refusal to permit participation could be determined, and physical withdrawal of miners in the affected area would be directed in the order.